

Office Action Summary

Application No.

09/518,756

Applicant(s)

EVERETT ET AL.

Examiner

Norca L. Torres-Velazquez

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 December 2000 and April 23, 2001
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 9-22 and 26-34 is/are allowed.
- 6) ☒ Claim(s) 1,4 and 6-8 is/are rejected.
- 7) ☒ Claim(s) 2,3,5 and 23-25 is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 18) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: _____

Art Unit: 1771

DETAILED ACTION

1. Applicant's arguments filed on 12/11/00 have been fully considered.
2. The Statutory type (35 U.S.C. 101) double patenting rejection has been withdrawn in view of the abandonment of Application No. 09/096,653.
3. The 35 U.S.C. 103(a) rejections of claims 2-3, 5 and 9-22 have been withdrawn in view of Applicants' arguments.
4. Applicants argue that the structures taught by the Bewick-Sonntag et al. reference differ from the configurations called for by the Applicant's specification.

The Examiner maintains the rejection of claims 1, 4 and 6-8 over Bewick-Sonntag et al. since the reference reads on the claimed absorbent article, it comprises all the elements claimed and the reference's examples would read on the independent claim 1 as written.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 4 and 6-8 are rejected under 35 U.S.C. 102(b) as being anticipated by BEWICK-SONNTAG et al. (US Patent 5,762,641).

BEWICK-SONNTAG et al. discloses an absorbent article comprising a liquid pervious topsheet, a liquid impervious backsheet, and an absorbent core. (Column 9, lines 23-26). The absorbent core comprises: a first structure comprising an upper layer comprising a first fibrous material and a first superabsorbent material, the absorbent core also comprises a second structure comprising a second fibrous material and a second superabsorbent material. (Column 3, lines 1-



**UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office**

Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/518,756	03/03/00	EVERETT R	13,507.2

PAUL YEE
KIMBERLY-CLARK WORLDWIDE INC
401 NORTH LAKE STREET
NEENAH WI 54957-0349

IM52/0827

EXAMINER

TORRES VELAZQUEZ, N

ART UNIT

1771

PAPER NUMBER

4

DATE MAILED: 08/27/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Art Unit: 1771

10). BEWICK-SONNTAG et al. also teaches that the first structure can comprise first particulate super-absorbent mixed with the first fibrous material as a substantially homogeneous upper layer, but preferably some of the super-absorbent is present in a distinct layer below the upper layer of first fibrous material. The second or storage-structure can comprise a mixture of the second fibrous material and the second superabsorbent material. Preferably, they are present in distinct layers. (Column 4, lines 27-36).

The limitation of having a Liquid Wicking Value of at least about 38% in one of the first and second primary layer regions fails to provide patentable distinction over the prior art. The prior art is found to disclose each chemical and structural feature instantly claimed, therefore it must meet the property requirement specified, otherwise, applicant's claim is incomplete. Note *ex parte Slob* (157 USPQ 172) which supports this position. The same applies to claims 7-8.

As for Claim 4, the Combined Conductance-Wicking Value is inherent from the structure in the independent claim.

As for Claim 6, BEWICK-SONNTAG et al. also teaches that the first structure is intended to be positioned toward a wearer's body in use.

Allowable Subject Matter

7. Claims 9-22 and 26-34 are allowed.

8. Claims 2-3, 5 and 23-25 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 1771


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Norca L. Torres-Velazquez whose telephone number is 703-306-5714. The examiner can normally be reached on Monday-Thursday 7:30-5:00 pm and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1495.

nlt *mt*
February 21, 2001


TERREL MORRIS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700